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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/194,700	03/04/1999	URBAN WIDLUND	000515-141	3507
21839	7590	04/06/2005	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			KIDWELL, MICHELE M	
POST OFFICE BOX 1404			ART UNIT	
ALEXANDRIA, VA 22313-1404			PAPER NUMBER	
			3761	

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/194,700

Applicant(s)

WIDLUND, URBAN

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10, 13-17, 19, 20 and 22-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8, 10, 13-17, 19, 20 and 22-26 is/are rejected.
- 7) ☒ Claim(s) 2 and 27-33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 29, 2004 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1 – 8, 13 – 17 19 – 20 and 22 – 30 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 – 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance:

- Claim 3 recites the broad recitation hydrophilic, absorbent fibers and the claim also recites cellulose fibers, cotton, rayon, jute or peat moss which is the narrower statement of the range/limitation
- Claim 4 recites the broad recitation hydrophilic absorbent foam material and the claim also recites polyurethane foam or cellulose foam which is the narrower statement of the range/limitation
- Claim 5 recites the broad recitation hydrophobic fibers and the claim also recites polypropylene fibers, polyethylene fibers, polyester fibers or hydrophobic bi-component fibers which is the narrower statement of the range/limitation

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- Claim 6 recites the broad recitation hydrophobic foam and the claim also recites polyethylene foam which is the narrower statement of the range/limitation

Regarding claims 7 and 8, the applicant initially states in claim 1 that the absorbent article includes a liquid pervious surface layer that consists of hydrophilic absorbent material as set forth in claim 1.

However, in claims 7 and 8, the applicant states that the liquid pervious surface layer comprises a laminate of a first liquid pervious hydrophobic material layer and a second liquid pervious, hydrophilic layer arranged closed to the absorbent body and either outside (claim 7) or inside (claim 8).

MPEP 2111.03 states that a claim which depends from a claim which "consists of" the recited elements or steps cannot add an element or step (i.e. a first and second layer).

In view of the specification, it is unclear if the applicant intends to claim a layer pervious surface that consists of a hydrophilic material or if the applicant intends to claim a liquid pervious surface layer that comprises both hydrophobic and hydrophilic material. Correction and/or clarification are required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 16 – 17, 19 – 20 and 22 – 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Robinson (US 5,330,456).

With respect to claims 1, 16, 19 and 22, Robinson discloses an absorbent article comprising a liquid-pervious surface layer (102), a liquid-impervious surface layer (104) and an absorbent body (10) enclosed between the two surface layers wherein the article further exhibits a wetting region adapted to be disposed adjacent the mucous membranes of the user, which is the region of the liquid pervious surface layer which is intended to first be wetted by body fluid emitted to the article (figure 6), wherein the liquid pervious surface layer within the wetting region consists of hydrophilic absorbent material adapted to retain moisture, at least at the surface of the liquid-pervious surface layer which is intended to be facing the user during use so as to maintain the mucous membranes of the user moist, and that all remaining parts of the liquid pervious surface layer consist of a hydrophobic material (col. 5, lines 37 – 40) and wherein an extent of the wetting region is smaller than an extent of the absorbent body as set forth in figure 6.

With reference to claims 17 and 20, Robinson discloses an absorbent article wherein the wetting region covers at least part of the absorbent body as set forth in figure 6.

Regarding claims 23 – 26, see col. 4, line 36.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 – 8, 10, 13 – 17, 19 – 20, 22 – 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lassen et al. (US 4,631,062) and further in view of Levesque (US 3,838,692).

With respect to claims 1, 16 and 19, Lassen et al. (hereinafter "Lassen") discloses an absorbent article comprising a liquid-pervious surface layer (80), a liquid-impervious surface layer (70) and an absorbent body (74) enclosed between the two surface layers wherein the article further exhibits a wetting region adapted to be disposed adjacent the mucous membranes of the user, which is the region of the liquid pervious surface layer which is intended to first be wetted by body fluid emitted to the article as set forth in col. 6, lines 22 – 29. Lassen also discloses an extend of wetting region to be smaller than an extent of the absorbent body as set forth in figure 9. The examiner contends that an "extent" of the wetting region may be the uppermost peak of the area generally designated by reference numeral "80" which is smaller than an extent of the absorbent body, which is considered as the entire absorbent (74) as shown in figure 9.

The difference between Lassen and claim 1 is the provision that the liquid pervious surface layer within the wetting region consists of hydrophilic absorbent

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material, and that all remaining parts of the liquid-pervious surface layer consist of a hydrophobic material, and wherein an extent of the wetting region is smaller than an extent of the absorbent body.

Levesque teaches a liquid pervious surface layer where a wetting region consists of hydrophilic material and all remaining parts of the liquid pervious surface layer consist of a hydrophobic material as set forth in col. 2, lines 3 – 11.

It would have been obvious to one of ordinary skill in the art to modify the liquid pervious surface layer of Lassen to provide a layer consisting of a hydrophilic material surrounded by hydrophobic material because such a layer encourages the passage of body liquids through the layer so that they may be absorbed by the underlying structure while preventing secondary strike-through and substantially reducing skin irritation which would otherwise be caused by body fluids remaining in contact with a wet diaper liner and the skin as taught by Levesque in col. 2, lines 49 – 59.

As to claim 3, Levesque teaches the hydrophilic material in the liquid pervious surface layer primarily consisting of rayon as set forth in col. 4, lines 6 – 17.

With reference to claims 4 and 6, the examiner contends that the claimed limitations are an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

Regarding claim 5, Levesque teaches the hydrophilic material in the liquid pervious surface layer primarily consisting of polypropylene as set forth in col. 4, lines 6 – 17.



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Regarding claim 7, Levesque teaches an article wherein the liquid pervious surface layer comprises a laminate of a first liquid-pervious layer, hydrophobic material layer and a second, liquid-pervious, hydrophilic material layer as set forth in col. 4, lines 32 – 35. While Levesque does not provide an explicit arrangement and/or extension of the layers, the examiner contends that the provision of such is within the level of ordinary skill in the art since the general conditions of the claim have been disclosed by the prior art.

Regarding claim 8, Levesque teaches an article wherein the liquid pervious surface layer comprises a laminate of a first liquid-pervious layer, hydrophobic material layer and a second, liquid-pervious, hydrophilic material layer as set forth in col. 4, lines 32 – 35. While Levesque does not provide an explicit arrangement and/or extension of the layers, the examiner contends that the provision of such is within the level of ordinary skill in the art since the general conditions of the claim have been disclosed by the prior art.

With reference to claim 10, Levesque teaches an absorbent article wherein the hydrophobic material is constituted of a hydrophilic material which has been rendered hydrophobic as set forth in col. 5, lines 3 – 6.

As to claim 13, Lassen discloses an absorbent article wherein the article comprises a shaping member which, by means of influence from forces which the article is subjected to during use, has an ability to bring the wetting region into contact with the mucous membranes of the user as set forth in col. 11, line 47 to col. 12, line 26.

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With reference to claim 14, Lassen discloses the shaping member as a compression as set forth in col. 12, lines 19 – 22.

As to claim 15, Lassen discloses the shaping member as an insert as set forth in col. 12, lines 38 – 42.

With respect to claims 17 and 20, both Levesque and Lassen disclose an absorbent article wherein the wetting region covers at least a portion of the absorbent body as set forth in col. 7, lines 29 – 35 and in figure 2, respectively.

With respect to claims 22 – 26, both Levesque and Lassen disclose the absorbent article as a sanitary napkin as set forth in col. 7, lines 34 – 35 and in figure 1, respectively.

### ***Allowable Subject Matter***

Claims 2 and 27 – 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The overall claimed combination of an absorbent article comprising liquid pervious surface layer within a wetting region that consists of a hydrophilic absorbent material and all remaining parts of the liquid pervious surface layer consist of a hydrophobic material wherein a hump projects from the liquid pervious surface layer or wherein the wetting region contacts only the mucous membranes of the user has neither been anticipated nor rendered obvious by the prior art of record.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michele Kidwell  
Examiner  
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